

KATHLEEN HEIKKILA, RICHARD A. BATTIN, and
VINCE PANESKO,

No. 04-2-0020c

Petitioners,

ORDER ON MOTIONS

V.

CITY OF WINLOCK,

Respondent,

And

CARDINAL FG COMPANY,

Intervenor.

THIS Matter comes before the Board on motions to dismiss filed by the City of Winlock (City of Winlock's Motion to Dismiss, November 22, 2004) and the Intervenor (Cardinal FG Company's Motion to Dismiss, November 18, 2004). Petitioner Panesko filed his Response to Cardinal FG Company's Motion to Dismiss on December 1, 2004. Petitioners Heikkila and Battin filed no opposition to the motions to dismiss.¹

There are nine issues set out in the Prehearing Order in this case. The City moves to dismiss Issues 1, 3, 4, 5, 6 and 8. City of Winlock's Motion to Dismiss at 1. The Intervenor (Cardinal) moves to dismiss the consolidated petitions for review, which motion presumably encompasses all nine issues. Cardinal FG Company's Motion to Dismiss at 1.

¹ Under the terms of the Prehearing Order issued November 17, 2004 and as discussed with the parties at the prehearing conference on November 12, the deadline for responses to motions to dismiss was December 3, 2004. This was also the deadline for motions to supplement the record. Petitioner Heikkila did file a Motion to Add to the Index and/or Allow New or Supplemental Evidence on November 30, 2004, but did not file any opposition to the motions to dismiss.

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1 properly issues for the hearing on the merits. Similarly, we will not resolve the challenges to
2 compliance with RCW 36.70A.040 and 36.70A.070 (Issues 5 and 6) on motion. These are also
3 properly issues for the hearing on the merits. We answer the issues concerning the City's compliance
4 with RCW 36.70A.110(4) here because the issues are narrowly tailored, have received adequate
5 briefing without reference to an extensive record, and early resolution of this issue may assist the
6 parties with respect to an issue that has been raised in more than one case. (See *Harader, et al. v.*
7 *Napavine*, WWGMHB Case No. 04-2-0017c).
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9 10 **BURDEN OF PROOF**

11 In determining the issues presented in this case, the Petitioners bear the burden of proof.
12 Comprehensive plan amendments and development regulations, and amendments to them are
13 presumed valid upon adoption. RCW 36.70A.320(1). To meet their burden, the Petitioners must
14 show that the challenged amendments are clearly erroneous:
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16 The board shall find compliance unless it determines that the action by the state agency,
17 county, or city is clearly erroneous in view of the entire record before the board and in light of
18 the goals and requirements of this chapter.
19 RCW 36.70A.320(3).
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21 In order to find the County's action clearly erroneous, the board must be "left with the firm and
22 definite conviction that a mistake has been made." *Department of Ecology v. PUDI*, 121 Wn.2d 179,
23 201, 849 P.2d 646 (1993). Where the City (and, in this case, the Intervenor) moves for dismissal, the
24 City must set forth its argument in favor of dismissal. However, whether on motions or at the hearing
25 on the merits, we review the issues under the clearly erroneous standard.
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27 **ISSUES PRESENTED**

28 Challenges to compliance with RCW 36.70A.110(4):
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30 Issue No. 1: In the context of the entire record are the statements in Ordinances 867 and 868
31 (with attachments) which enable the extension of water services beyond the Winlock UGA
32 non-compliant with RCW 36.70A.110(4)?

1 Issue No. 2: If those sections of the challenged documents which enable future water line
2 extensions outside of the UGA are determined to be non-compliant, will continued
3 authorization of and installation of water lines outside of the Winlock UGA during the
4 remand period significantly interfere with goals 1 and 2 of the Growth Management Act,
RCW 36.70A.020(1) and (2)?

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6 Issue No. 8: Is the Annexation Policy on Page I-5 of the Winlock Water Supply Plan Update
7 non-compliant with RCW 36.70A.110(4)?

8 9 **DISCUSSION AND ANALYSIS**

10 The Intervenor (Cardinal) argues that RCW 36.70A.110(4) does not prohibit running a municipal
11 water line between two urban growth areas (UGAs), even when the water line traverses the rural
12 areas. Cardinal FG Company's Motion to Dismiss at 2-3. As long as the water line is not used to
13 serve the rural area, Cardinal argues, it does not contravene RCW 36.70A.110(4) and *Thurston*
14 *County v. Cooper Point Association*, 148 Wn.2d 1, 57 P.3d 1156 (2002).

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17 The City points out that the clear language of the challenged amendments allows extension of the
18 City's water service only if consistent with the GMA. City of Winlock's Motion to Dismiss at 4.³

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20 Petitioner Panesko argues that RCW 36.70A.110(4) allows the extension of urban services outside of
21 a UGA with only limited exceptions. Petitioner Response to Cardinal FG Company's Motion to
22 Dismiss at 4. Petitioner states that extending urban services to a planned industrial site is not one of
23 those exceptions. *Ibid.*

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26 Issues No. 1 and 8 ask the Board to find that RCW 36.70A.110(4) prohibits the extension of the
27 City's water service outside of its UGA to another UGA. RCW 36.70A.110(4) provides:

28 In general, cities are the units of local government most appropriate to provide urban
29 governmental services. In general, it is not appropriate that urban governmental services be
30 extended to or expanded in rural areas except in those limited circumstances shown to be

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32 ³ The City also argues that Ordinance 868 is not a GMA action but does not argue its jurisdictional challenge at this point.
Ibid.

1 necessary to protect basic public health and safety and the environment and when such
2 services are financially supportable at rural densities and do not permit urban development.

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4 Although the amendments to the City's comprehensive plan that allow extension of City water
5 service do not expressly provide that an extension will be made from the City's UGA to the new
6 UGA adopted for the Cardinal major industrial development, it is plain that this was the purpose of
7 the amendments. The City Council Findings provide that the City has entered into a letter of intent
8 with Cardinal to study serving the proposed Cardinal facility with City water (Finding 10) and further
9 provide that the City has excess capacity, the revenue from sale of which would benefit existing users
10 (Finding 13). 2004 City Council Findings, Comprehensive Plan Amendments. The City Council
11 also found that "The City's current Comprehensive Plan policy on water service outside urban areas
12 is more restrictive than permitted by the GMA." *Ibid.* (Finding 13).
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15 Issue Nos. 1, 2 and 8 argue that City water services cannot be provided to the Cardinal site because
16 that would violate the RCW 36.70A.110(4) prohibition against providing urban services in the rural
17 areas. However, the proposed Cardinal site for a major industrial development would not be a "rural
18 area"; it would be an urban growth area:
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20 Final approval of an application for a major industrial development shall be considered an
21 adopted amendment to the comprehensive plan adopted pursuant to RCW 36.70A.070
22 designating the major industrial development site on the land use map as an urban growth
23 area.
24 RCW 36.70A.365(3)(in pertinent part).

25 The prohibition in RCW 36.70A.110(4) does not apply to urban services in urban growth areas.
26 Urban growth areas by definition are allowed to have urban levels of growth and should have the
27 urban services to support that growth. See RCW 36.70A.030(17), (18), and (19). Nor can the statute
28 be read to mean that water service lines cannot pass through rural lands. The reason for the
29 prohibition in RCW 36.70A.110(4) against providing urban services to rural areas is that urban
30 services in the rural areas would create pressure to urbanize the rural areas and create sprawl.

31 *Thurston County v. Cooper Point Association*, 148 Wn. 2d 1, 57 P. 3d 1156 (2002). If the Winlock
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1 water lines just traverse the rural areas and do not serve them, it will not violate RCW 36.70A.110(4).

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3 The Petitioner does not point to any statutory prohibition against providing water services from one
4 UGA to another. The burden is on the Petitioner(s) to demonstrate why the challenged amendments
5 violate the GMA. The legislature has directed the boards to grant deference to counties and cities in
6 how they plan for growth, consistent with the goals and requirements of the GMA. RCW
7 36.70A.3201. Comprehensive plan amendments are presumed valid upon adoption. RCW
8 36.70A.320. Here, as the Central Board stated in *Gain v. Pierce County*, CPSGMHB Case No. 99-3-
9 0019 (Final Decision and Order, April 18, 2000), "Petitioners offer no statutory provisions to support
10 their assertion that sewer [or water] lines must be confined within the boundaries of UGAs and
11 cannot pass through rural areas." RCW 36.70A.110(4) does not preclude municipalities from
12 providing water service from one UGA to another.
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16 *Conclusion:* RCW 36.70A.110(4) does not prohibit a municipality from extending water service
17 from its own UGA to another GMA-compliant UGA. Because we find that non-compliance has not
18 been proved, there can be no finding of substantial interference with the goals of the GMA based on
19 RCW 36.70A.110(4). We do not reach the question of whether the Winlock Water Supply Plan is a
20 GMA action because it has not been argued.
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22 FINDINGS OF FACT

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24 1. Winlock is a city located in Lewis County, a county located west of the crest of the Cascade
25 Mountains that is required to plan pursuant to RCW 36.70A.040.
- 26 2. Petitioner Panesko participated in the adoption process of Ordinance 867 and 868 before the
27 City Council of the City of Winlock.
- 28 3. Ordinance 867 amends the City's comprehensive plan. Ordinance 868 amends the City's
29 Water Supply Plan. Both ordinances were adopted on August 23, 2004.
- 30 4. Petitioner Panesko filed his petition for review of Ordinances 867 and 868 (with attachments)
31 on October 14, 2004.
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- 1 5. Intervenor Cardinal FG Company has submitted an application for a major industrial
2 development pursuant to RCW 36.70A.365 to Lewis County.
- 3 6. The City has entered into a letter of intent with Cardinal to study serving the proposed
4 Cardinal facility with city water (Finding 10) and has found that the City has excess water
5 capacity, the revenue from sale of which would benefit existing users of the City's water
6 system. (Finding 13). 2004 City Council Findings, Comprehensive Plan Amendments.
- 7 7. The City Council also found that "The City's current Comprehensive Plan policy on water
8 service outside urban areas is more restrictive than permitted by the GMA." (Finding 13)
9 2004 City Council Findings, Comprehensive Plan Amendments.
- 10 8. The purpose of the comprehensive plan amendments (Ordinance 867) was to allow extension
11 of the City's water service to Cardinal FG Company's proposed major industrial
12 development.
- 13 9. If approved, the proposed Cardinal site for a major industrial development would not be a
14 "rural area"; it would be a designated "urban growth area." RCW 36.70A.365.
- 15 10. If the Winlock water lines just traverse the rural areas to get to the new urban growth area and
16 do not provide water service in the rural area, they will not extend or expand the City's water
17 service in a rural area.

21 CONCLUSIONS OF LAW

- 22 1. This Board has jurisdiction over the challenges to Ordinance 867 and the parties to this
23 motion.
- 24 2. Petitioner Panesko has standing to challenge the adoption of Ordinance 867.
- 25 3. The Petition for Review was timely filed.
- 26 4. The extension of water service from the Winlock municipal UGA to the Cardinal major
27 industrial development UGA does not violate RCW 36.70A.110(4).

ORDER

Based on the foregoing, Issues No.1, 2 and 8 are hereby DISMISSED. The remaining issues in this consolidated case shall proceed to the hearing on the merits according to the schedule set forth in the Prehearing Order.

This is not a final order for purposes of appeal pursuant to RCW 36.70A.300(5) or reconsideration pursuant to WAC 242-02-832. This order shall become final upon entry of the final decision and order in this case number.

DATED this 10th day of January 2005.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

Margery Hite, Presiding Officer

Holly Gadbaw, Board Member

Gayle Rothrock, Board Member